that his covenant is dependent, but that there has been a constructive eviction. Where, as in the principal case, one room in a building is let, the principles of ordinary bilateral contracts might well be applied, since the lessee gets no estate in the land. See *Shawmut National Bank* v. *Boston*, 118 Mass. 125. But even in such cases the extension in the law would seem too radical to be made without the aid of a statute. But see *Delmar Investment Co.* v. *Blumenfield*, 118 Mo. App. 308, 322, 94 S. W. 823, 828. *Cf. Chicago Legal News Co.* v. *Browne*, 103 Ill. 317.

MANDAMUS — ACTS SUBJECT TO MANDAMUS — COMPELLING CITY OFFICIALS TO SUBMIT ALLEGED UNCONSTITUTIONAL ORDINANCE TO POPULAR VOTE. — A statute provided that the board of city commissioners should submit to popular vote any measure proposed by a certain percentage of the qualified voters. The commissioners refused to hold such an election, on the ground that the proposed measure would be unconstitutional. *Held*, that mandamus will issue against them. *State* ex rel. *Foote* v. *Board of Commissioners*, 144 Pac. 241 (Kan.).

The court objects that the constitutionality of the proposed ordinance is a purely moot question. It is true that the courts so far hesitate to pass upon the constitutionality of legislative acts that they allow the point to be raised only by one whose rights are threatened. *Sinclair* v. *Jackson*, 8 Cow. (N. Y.) 543, 579. Moreover, courts will ordinarily refuse to restrain the legislative function of passing municipal ordinances, however unconstitutional they appear to be. *New Orleans Water Works Co.* v. *New Orleans*, 164 U. S. 471; *Stevens* v. *St. Mary's Training School*, 144 Ill. 336, 32 N. E. 962. In the ordinary case, where the mere passing of the ordinance involves no injury or expense, adequate relief is secured by refusing to enforce it when asserted. In the principal case, however, to submit the ordinance to popular vote would involve a large expenditure of public money. Moreover, equity could effectively prevent the expense by a decree against the commissioners, giving relief by analogy to its well-established jurisdiction to enjoin the waste of public funds at the suit of a taxpayer. See *Solomon* v. *Fleming*, 34 Neb. 40; *Elliott* v. *Detroit*, 121 Mich. 611, 84 N. W. 820; 28 HARV. L. REV. 309. Such considerations might well justify the court in refusing mandamus, where the invalidity of the proposed ordinance, if passed, would be undoubted; but they lose their force where, as in the principal case, the constitutionality of the ordinance was not seriously questioned.

MASTER AND SERVANT — WORKMAN'S COMPENSATION ACTS — EFFECT OF ILLEGALITY OF CONTRACT OF EMPLOYMENT. — In an action under the Workman's Compensation Act for injuries received by an employee in the course of his employment, it appeared that the plaintiff's wages were to have been paid in food and drink, in violation of the Truck Acts, 1 & 2 Wm. IV, c. 37, 50 & 51 Vict., c. 46. *Held*, that the plaintiff cannot recover compensation. *Kemp* v. *Lewis*, 111 L. T. R. 699 (C. A.).

The case is one of first impression and its result seems questionable, if the relation of master and servant in fact existed. At common law, each party is subject to the incidents of the relation, although bound by no enforceable contract. Thus an infant whose contract is voidable may be barred by assumption of the risk. *Houston & G. N. R. Co.* v. *Miller*, 51 Tex. 270. Likewise an employer, who has the right to avoid the contract because of the employee's fraudulent misrepresentation, may still be liable for the violation of a relational duty resulting in injury to the employee. *Galveston, H. & S. A. Ry. Co.* v. *Harris*, 48 Tex. Civ. App. 434, 107 S. W. 108; *Lupher* v. *Atchison, T. & S. F. R. Co.*, 81 Kan. 585, 106 Pac. 284. *Contra*, *Norfolk & Western Ry. Co.* v. *Bondurant's Adm'r*, 107 Va. 515, 59 S. E. 1091. Doubtless a contract to

accomplish an illegal object would prevent a servant engaged in its performance from recovering for injury. *Wallace* v. *Cannon*, 38 Ga. 199. But it seems that illegality in the form and not in the object of the contract, although it makes the contract void, should not affect the existence or the incidents of the relation. One of these relational duties is that imposed by the Workman's Compensation Act. See DICEY, LAW AND PUBLIC OPINION, pp. 282–283. Even if the duty to pay compensation is regarded as contractual, it is difficult to support the principal case. The primary purpose of the Truck Acts is the protection of the employee. See *Archer* v. *James*, 2 B. & S. 67, 83. He is allowed to avoid any contract for the payment of his wages otherwise than by money; and he may recover such wages though he has received full value in some other form. Consequently it is strange, to say the least, to give the statute such an effect as to deprive the workman of his right to compensation for injury.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — RECOVERY UNDER STATUTE OF PLACE OF INJURY WHILE EMPLOYED UNDER CONTRACT MADE ELSEWHERE. — The plaintiff's intestate, while employed in New Jersey under a contract made in the state of New York for work to be done partly in each state, suffered a fatal injury in the course of his employment. The New Jersey workmen's compensation act imposes a system of compensation on all employments within the state, unless the parties expressly elect otherwise. N. J. LAWS OF 1911, c. 95, § ii; c. 368. The plaintiff sues to recover compensation under the New Jersey law. *Held*, that plaintiff may recover. *American Radiator Co.* v. *Rogge*, 92 Atl. 85 (Sup. Ct., N. J.).

The problems in the conflict of laws arising under workmen's compensation acts where the same employment is carried on in two or more states were discussed in 27 HARV. L. REV. 271. In view of that discussion, the principal case seems clearly sound in applying the law of the place of injury, since the New Jersey act simply substitutes for the master's tort liability, by an agreement imposed by the law, a statutory liability broader in scope. N. J. LAWS OF 1911, c. 95, § ii, cl. 9; c. 368. See *Johnson* v. *Nelson*, 150 N. W. 620 (Minn.). However, another form of statute under which the employer creates a right for the employee against some state insurance fund, or private insurance company, might well have extraterritorial application. See *Schweitzer* v. *Hamburg American S. S. Co.*, 78 N. Y. Misc. 448, 138 N. Y. Supp. 944; *Gould's Case*, 215 Mass. 480, 483, 102 N. E. 693, 694; 27 HARV. L. REV. 271. To avoid the inconvenience, uncertainty, and expense consequent upon an injury in the course of an employment contracted in a jurisdiction having the insurance type of statute, but carried on in another jurisdiction like that of the principal case, it seems desirable to have some uniform provision permitting employers whose business is carried on under such circumstances to elect to provide compensation under the law of the jurisdiction in which the principal establishment is located.

MORTGAGES — FORECLOSURE — DEFECT OF TITLE AS DEFENSE TO PURCHASE-MONEY MORTGAGE. — The plaintiffs conveyed land as trustees under a power of sale and took back a purchase-money mortgage. The land passed to the defendants by *mesne* conveyances, each grantee, including the defendants, assuming the mortgage. The defendants are still in undisturbed possession, but resist foreclosure on the ground that the original power of sale was invalid as a restraint upon alienation. *Held*, that foreclosure will be decreed. *Peabody* v. *Kent*, 213 N. Y. 154.

While the original purchaser or his grantee remains in undisturbed possession of land, no defect of title in the grantor will afford a defense to the foreclosure of a purchase-money mortgage. *Hulfish* v. *O'Brien*, 20 N. J. Eq. 230; *Black*